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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 (SAN JOSE DIVISION)

14 CARSON PENKAVA, individually and on  
 Behalf of those similarly situated,

Plaintiff,

vs.

YAHOO!, INC.,

Defendant.

**CV 12-03414 PSG**

INDIVIDUAL AND CLASS  
 ACTION COMPLAINT FOR  
 DECLARATORY RELIEF,  
 EQUITABLE RELIEF, AND FOR  
 DAMAGES

DEMAND FOR JURY TRIAL

20 Plaintiff CARSON PENKAVA ("Plaintiff"), individually and on behalf of the Class described  
 21 below, bring this action for injunctive relief and statutory damages against Defendant Yahoo!, Inc.,  
 22 (hereinafter "Yahoo!") and allege the following:

**NATURE OF THE ACTION**

24 1. This class action seeks injunctive relief and statutory damages against Yahoo! for its  
 25 unlawful and wrongful wiretapping or, in the alternative, eavesdropping in violation of California's  
 26 Invasion of Privacy Act ("CIPA"), Cal. Penal Code § 630, *et seq.*

BY FAX

1           2.       “The Legislature hereby declares that advances in science and technology have led to the  
2 development of new devices and techniques for the purpose of eavesdropping upon private  
3 communications and that the invasion of privacy resulting from the continual and increasing use of such  
4 devices and techniques has created a serious threat to the free exercise of personal liberties and cannot  
5 be tolerated in a free and civilized society.” Cal. Pen. Code § 630.

6           3.       Plaintiff and the Class allege that Yahoo!, intentionally and as part of a common practice,  
7 intercepts e-mails sent by individual non-Yahoo! subscribers sent from their non-Yahoo! e-mail  
8 accounts before their intended delivery to private individual Yahoo! subscribers, through the application  
9 of devices and techniques to review those e-mails for their words, content and thought processes.  
10 Plaintiff is informed and believes that Yahoo! purports to justify the legality of its practice based upon a  
11 purported consent given by the intended Yahoo! subscriber recipient. However, the interception and  
12 review of the content of each e-mail occurs prior to delivery to the intended Yahoo! recipient and  
13 without the consent of the e-mail’s author and sender. In so conducting itself, Yahoo! intercepts  
14 Plaintiff’s e-mail communications without Plaintiff’s knowledge, consent, or permission in violation of  
15 CIPA. Cal. Penal Code §§ 631, 632, 637 and 637.2. The invasion of privacy by wiretapping or, in the  
16 alternative, eavesdropping, caused by Yahoo!’s continual and pervasive use of such devices and  
17 techniques seriously threatens the free exercise of personal liberties and is contrary to the behavior that  
18 the California Legislature has declared should be tolerated in a free and civilized society.

19           4.       Through CIPA, the California Legislature intends to protect the right of privacy. Cal.  
20 Pen. Code § 630. Plaintiff brings this class action in reliance on and in furtherance of the protections  
21 afforded by the California Constitution, and California state law and public policy.

22           5.       Plaintiff is among the multitude of U.S. residents whose privacy was invaded when  
23 Plaintiff’s private communications were and continue to be wiretapped or, in the alternative,  
24 eavesdropped upon by Yahoo!. As a result of Yahoo!’s invasion of Plaintiff’s and the Class  
25 Members’ privacy, Plaintiff and the Class Members have been injured and each has a concrete  
26 interest in the outcome of this suit for redress or to stop Yahoo!’s actions. Accordingly, Plaintiff  
27 brings this class action against Yahoo! on behalf of Plaintiff and others similarly situated, to obtain  
28 injunctive relief and statutory damages as authorized under CIPA.

**THE PARTIES**

6. Plaintiff CARSON PENKAVA is and at all times relevant hereto was a resident of Alabama and is over the age of 19 years.

7. The Class is defined as follows:

All individuals who are not residing in California but who are residing in the United States who are not Yahoo! subscribers and who have sent an e-mail to a private individual Yahoo! subscriber from their non-Yahoo! e-mail account.

8. Yahoo! is a Delaware corporation with its principle place of business at 701 First Avenue, Sunnyvale, California 94089. Yahoo!'s registered agent for service of process is C T Corporation System, 818 W. Seventh Street, Los Angeles, California 90017.

**GENERAL ALLEGATIONS**

9. Yahoo! operates a webmail or web-based email service known as "Yahoo! Mail."

10. Plaintiff does not have or maintain a personal Yahoo! Mail account.

11. Plaintiff has and continues to send e-mail to Yahoo! subscriber recipients.

12. Neither Plaintiff nor any other member of the Class has provided their consent to Yahoo! to intercept e-mails sent from their non-Yahoo! e-mail accounts before their delivery to private individual Yahoo! subscribers or, through Yahoo!'s application of devices and techniques, to review those e-mails for their words, content and thought processes.

13. Yahoo! is not an actual or intended recipient nor a party to Plaintiff's and the Class Members' e-mails sent to private individual Yahoo! subscribers.

14. Yahoo!'s acts of interception in violation of CIPA resulted from business decisions, practices and standard operating policies that were developed and implemented in California and which are unlawful and constitute criminal conduct in the state of Yahoo!'s residence and principal business operations center. Yahoo!'s implementation of the business decisions, practices and standard operating policies which violate CIPA occurred in California. Yahoo! profited in California as a result of its repeated and pervasive violation of CIPA. Yahoo!'s wrongful conduct which occurred in California harmed all Class Members.

15. By conducting itself in the manner alleged herein, including Paragraphs 3, and 9-14,

1 Yahoo! violated CIPA and otherwise acted adversely to the Plaintiff's and each Class Members' privacy  
2 rights.

### 3 JURISDICTION AND VENUE

4 16. Federal diversity jurisdiction exists under 28 U.S.C. §1332(d) because Plaintiff and the  
5 Class are residents of states other than California and Yahoo! is a resident of California. The aggregate  
6 value of the Class Members' claims exceeds the sum or value of five million dollars (\$5,000,000.00),  
7 exclusive of recoverable interest and costs. None of the causes of action stated herein has been assigned  
8 or otherwise given to any other court or tribunal. Plaintiff's claims are not preempted by the Electronic  
9 Communications Privacy Act of 1986 ("ECPA"), 18 U.S.C. § 2510 *et seq.*, or other law or federal  
10 regulation.

11 17. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b) because Yahoo!  
12 resides in this Judicial District.

### 13 CLASS ACTION ALLEGATIONS

14 18. Plaintiff brings this action individually and on behalf of all persons similarly situated  
15 pursuant to Rules 23(b)(2), and/or 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiff seeks to  
16 represent the following Class:

17 All individuals who are not residing in California but who are residing in the United  
18 States who are not Yahoo! subscribers and who have sent an e-mail to a private  
19 individual Yahoo! subscriber from their non-Yahoo! e-mail account.

20 19. Upon information and belief, the scope of the class definition, including its temporal  
21 scope, may be further refined after discovery of Yahoo!'s records and/or third party records.

22 20. Excluded from the Class are governmental entities, business entities including  
23 corporations, limited liability corporations and limited liability partnerships, and other organizations or  
24 groups of individuals who are not private individuals, Yahoo!, any entity in which Yahoo! has a  
25 controlling interest, and Yahoo!'s officers, directors, affiliates, legal representatives, employees, co-  
26 conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or  
27 judicial officer presiding over the matter and the members of their immediate families and judicial staff.

28 21. Plaintiff's claims are typical of the claims of the Class. Plaintiff is a member of the Class

1 Plaintiff seeks to represent, and the Members of the Class are similarly situated and similarly affected  
2 and harmed by Yahoo!'s wrongful conduct. Members of the Class are ascertainable from Plaintiff's  
3 description of the Class and/or Yahoo!'s records and/or records of third parties which will be accessible  
4 through discovery.

5 22. The representative Plaintiff will fairly and adequately represent the Members of the  
6 Class and have no interests which are antagonistic to the claims of the Class. Plaintiff's interests in  
7 this action are antagonistic to the interests of Yahoo!, and Plaintiff will vigorously pursue the claims  
8 of the Class.

9 23. The representative Plaintiff has retained counsel who are competent and experienced in  
10 consumer class action litigation, and have successfully represented plaintiffs in complex class actions.

11 24. Common questions of law and fact exist and predominate over those of an  
12 individualized nature, if any, and a common remedy by way of permissible statutory damages and  
13 injunctive relief is sought for the Class.

14 25. There are substantial questions of law and fact common to all Members of the Class  
15 which will predominate over any individual issues. These common questions of law and fact include,  
16 without limitation:

- 17 a. Whether Yahoo! has and continues to intercept and review and/or record the e-  
18 mail communications by Plaintiff and the Class to private individual Yahoo!  
19 subscribers before their receipt by the Yahoo! subscribers;
- 20 b. Whether Yahoo! has the consent of Plaintiff and the Class to intercept and  
21 review and/or record the e-mail communications by Plaintiff and the Class to private  
22 individual Yahoo! subscribers before their receipt by the Yahoo! subscribers;
- 23 c. Whether Yahoo!'s conduct as described in (a) and (b) above constitutes  
24 wiretapping in violation of CIPA;
- 25 d. Whether Yahoo!'s conduct as described in (a) and (b) above constitutes  
26 eavesdropping in violation of CIPA; and
- 27 e. Whether Plaintiff and the Class are entitled to injunctive relief and statutory  
28 damages as provided for by CIPA.

1           26. A class action provides a fair and efficient method, if not the only method, for  
2 adjudicating a controversy of this size. The substantive claims of the representative Plaintiff and the  
3 Class are nearly identical and will require evidentiary proof of the same kind and application of the  
4 same law. The nature of the case, the legal issues involved, and the relatively small monetary value of  
5 any individual claim for statutory damages militates against the viability of adjudication on an  
6 individual basis.

7           27. A class action is superior to other available methods for the fair and efficient  
8 adjudication of the controversy, because Plaintiff believes Class Members number in the hundreds of  
9 thousands and individual joinder is impracticable. The expense and burden of individual litigation  
10 would make it impracticable or impossible for proposed Class Members to prosecute their claims  
11 individually. Trial of Plaintiff's and the Class Members' claims is manageable. Unless a class is  
12 certified, Yahoo! will remain free to continue to engage in the wrongful and illegal conduct alleged  
13 herein without consequence.

14           28. The persons in the Class are so numerous that the joinder of all such persons  
15 individually in the case is impracticable, and the disposition of all as part of a single class action  
16 lawsuit, rather than hundreds or thousands of individual lawsuits, will benefit the parties and greatly  
17 reduce the aggregate judicial resources that would be spent if the matter were handled as hundreds or  
18 thousands of separate lawsuits.

19           29. Plaintiff will not encounter any difficulty in the management of this litigation which  
20 would preclude the maintenance of a class action.

21           30. The prosecution of this class action is vital to California's state interests and those of  
22 the Class in order to stop Yahoo!'s unlawful and repugnant practice of reviewing and reading people's  
23 e-mail without their consent and/or knowledge, conduct which the legislature has declared "cannot be  
24 tolerated in a free and civilized society." Cal. Pen. Code § 630.

25           31. Plaintiff has standing to bring this action pursuant to Cal. Pen. Code § 637.2 which  
26 states, "[a]ny person who has been injured by a violation of this chapter may bring an action against  
27 the person who committed the violation..." and further due to Yahoo!'s actions which occurred within  
28 the State of California, and because Yahoo!'s wrongful activities and decisions to engage in such



activities are unlawful and constitute criminal activity in California, which is Yahoo!'s state of principal residence as well as principal place of business operation and decision making.

### **CAUSE OF ACTION**

Violation of Cal. Penal Code § 630, *et seq.*

(On Behalf of Plaintiff and the Class)

32. Plaintiff incorporates herein by reference the allegations contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

33. Cal. Pen. Code § 631 makes it illegal and prohibits anyone from intentionally and without the consent of all parties to engage in wiretapping of e-mail communications. In engaging in the conduct alleged herein, including Paragraphs 3, and 9-15 above, Yahoo! has and continues to violate Cal. Pen. Code § 631 as to Plaintiff and the Class.

34. In the alternative, and if the conduct alleged herein is not wiretapping within the meaning of Cal. Pen. Code § 631, Cal. Pen. Code § 632 makes it illegal and prohibits anyone from intentionally and without the consent of all parties to engage in eavesdropping of e-mail communications which are confidential communications as defined in Cal. Pen. Code section 632(c). In engaging in the conduct alleged herein, including Paragraphs 3, and 9-15 above, Yahoo! has and continues to violate Cal. Pen. Code § 632 as to Plaintiff and the Class.

35. At all relevant times, Yahoo! wiretapped or, in the alternative, eavesdropped upon and/or recorded the e-mails of Plaintiff and the Class sent from their non-Yahoo! accounts to the Yahoo! accounts of private individuals before receipt by the Yahoo! subscriber without the consent of all parties to the confidential e-mail communication. If such conduct constitutes eavesdropping under Cal. Pen. Code § 632, these communications qualify as confidential communications within the meaning of Cal. Pen. Code section 632(c). In engaging in the conduct as herein alleged, Yahoo! has and continues to violate CIPA as to Plaintiff and the Class.

36. On behalf of Plaintiff and the Class, Plaintiff seeks an order requiring Yahoo! to cease its violations of California Penal Code § 630, *et seq.* Among other things, Yahoo! should be required to stop eavesdropping, recording and/or intercepting e-mail sent from individual non-Yahoo! users to private individual Yahoo! users, and to stop intercepting Plaintiff's and the Class Members' e-mails

1 prior to receipt by Yahoo! subscribers.

2 37. On behalf of Plaintiff and the Class, Plaintiff further seeks an award of statutory damages  
3 for each member of the Class as prescribed by Cal. Penal Code § 637.2(a)(1). An award of statutory  
4 damages is necessary to redress violations and to deter future unlawful and wrongful circumventions of  
5 rightful privacy rights by Yahoo!.

6 WHEREFORE, Plaintiff prays for judgment, on behalf of Plaintiff and the proposed Class, as  
7 follows:

- 8 1. That the Court certify the Class as requested pursuant to Rules 23(b)(2), and/or  
9 23(b)(3) of the Federal Rules of Civil Procedure and appoint Plaintiff and Plaintiff's  
10 counsel to represent the Class;
- 11 2. For appropriate injunctive and/or declaratory relief including but not limited to an  
12 injunction that Yahoo! has and continues to engage in wiretapping as defined in CIPA  
13 against Plaintiff and the Class;
- 14 3. Statutory damages for each Class member;
- 15 4. Reasonable attorneys' fees, expenses and costs of suit; and
- 16 5. For such other relief as the Court may deem appropriate.

17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, individually and for the Class, demands a jury trial on all claims, issues and requests for  
20 relief.

21 DATED: June 28, 2012

ARNOLD LAW FIRM

22  
23 By: 

24 Clifford L. Carter  
25 Attorneys for Plaintiffs  
26  
27  
28